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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/588,211	06/06/2000	Francis R. Koperda	191910-1061	9999

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EXAMINER

CARDONE, JASON D

ART UNIT

PAPER NUMBER

2152

DATE MAILED: 05/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action SummaryApplication No.
09/588,211Applicant(s)
Koperda et al.Examiner
Jason D. CardoneArt Unit
2152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Nov 27, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 and 3 20) ☒ Other: See Attached Office Action

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DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-18 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-18 of prior U.S. Patent No. 6,230,203. This is a double patenting rejection.

3. An example of the double patenting rejection: regarding claim 1, the prior U.S. Patent claims a system for providing parametric statistics related to a level of service comprising at least a maximum bandwidth or data bit rate over a shared channel comprises a link access controller coupled to a plurality of network access devices, the link access controller for supervising a connection and denying service if requested bandwidth or bit rate by a coupled network access device exceeds a maximum bandwidth or data bit rate of an authorized level of service and a network control computer for collecting parametric statistics from said link access controller [U.S. Patent, col. 20, lines 55-65]..

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 19-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshikawa et al. "Yoshikawa", U.S. Patent No. 6,249,532, in view of Land et al. "Land", U.S. Patent No. 5,751,706.

6. Regarding claim 19, Yoshikawa discloses a method of providing statistics for billing users of data services provided over a cable television network comprising the steps of

monitoring session duration of a link to a network access device and storing data related thereto [Yoshikawa, col. 3, line 35 - col. 4, line 60 and col. 8, line 14 - col. 9, line 61],

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monitoring amount of data transferred to and from a network access device and storing data related thereto [Yoshikawa, col. 3, line 35 - col. 4, line 60, col. 8, line 14 - col. 9, line 61, and col. 11, lines 26-64], and

monitoring data lost in the link and storing data related thereto, the statistics permitting a flexible billing structure [Yoshikawa, col. 3, line 35 - col. 4, line 60, col. 11, lines 26-64, and col. 14, line 46-60].

Yoshikawa does not specifically disclose monitoring amount of data lost in the link. However, Land, in the same field of endeavor, discloses monitoring amount of data lost in the link [Land, col. 15, line 41 - col. 17, line 62]. It would have been obvious to one having the ordinary skill in the art, at the time the invention was made, to incorporate monitoring an amount of data lost, taught by Land, into the communication system, taught by Yoshikawa, since Land suggests establishing a call path through a packet based network, similar to the network disclosed by Yoshikawa [Yoshikawa, col. 1, lines 9-62], to be connected to a telecommunications network. One of ordinary skill in the art would have been motivated to modify Yoshikawa to include the data lost amount, in view of Land, in order to account for packet lost rate.

Therefore, it would have been obvious to combine Yoshikawa and Land (Yoshikawa-Land) to obtain the invention as specified in claim 19.

7. Regarding claim 20, Yoshikawa-Land further discloses the step of monitoring and storing the start time of the session [Yoshikawa, col. 17, lines 11-61] [Land, col. 14, lines 1-63].

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8. Regarding claim 21, Yoshikawa-Land further discloses the steps of subtracting the amount of lost data from the amount of transferred data to obtain an amount of actual data transferred and billing proportional to the amount of actual data transferred and session duration [Yoshikawa, col. 9, lines 1-61 and col. 16, lines 6-21] [Land, col. 15, line 41 - col. 17, line 62].

9. Regarding claim 22, Yoshikawa-Land further discloses the steps of recording the address of the network access device and of apparatus to which the network access device is linked during the session [Yoshikawa, col. 10, lines 33-65 and col. 18, lines 42-58] [Land, col. 9, line 52 - col. 10, line 60].

10. Regarding claim 23, Yoshikawa-Land further discloses the step of providing a plurality of service tiers depending on maximum shared bandwidth or bit rate [Yoshikawa, col. 7, lines 27-53] [Land, col. 15, line 59 - col. 16, line 27].

11. Regarding claim 24, Yoshikawa-Land further discloses the flexible billing structure comprises a fee determined by amount of actual data communicated during a session [Yoshikawa, col. 8, lines 14-67] [Land, col. 15, lines 20-36].

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12. Regarding claim 25, Yoshikawa-Land further discloses the step of monitoring quality of service provided a subscriber determined by additionally monitoring jitter and delay [Yoshikawa, col. 8, line 14 - col. 9, line 61 and col. 11, lines 26-64] [Land, col. 15, line 41 - col. 17, line 62].

13. Regarding claim 26, Yoshikawa-Land further discloses the step of storing preauthorized level of service data for subscribers, an administration computer communicating the preauthorized level of service data to a link access controller for regulating service at the preauthorized level [Yoshikawa, col. 1, lines 9-62] [Land, col. 5, line 30 - col. 6, line 61].

14. Regarding claim 27, Yoshikawa-Land further discloses the step of receiving parametric statistical data for a session of a network access device at an administration computer [Yoshikawa, col. 11, lines 26-64 and col. 14, line 46-60] [Land, col. 5, line 30 - col. 6, line 61 and col. 16, lines 10-55].

15. Regarding claim 28, Yoshikawa-Land further discloses the parametric statistical data comprises amount of data transferred and amount of data lost [Yoshikawa, col. 11, lines 26-64 and col. 14, line 46-60] [Land, col. 5, line 30 - col. 6, line 61 and col. 16, lines 10-55].

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Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D. Cardone, whose telephone number is (703) 305-8484.

The examiner can normally be reached on Monday through Thursday from 9:00am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Rinehart, can be reached on (703) 305-4815.


The fax numbers for the organization where this application or proceeding is assigned are as follows:


(703) 746-7238 (After Final Communications)

(703) 746-7239 (Official Communications)

(703) 746-7240 (For Status inquiries, Draft Communications)

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is (703) 305-3900.


Jason D. Cardone



**ROBERT B. HARRELL
PRIMARY EXAMINER**

May 1, 2002